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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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11 JONATHAN WILLERFORD,

12 Plaintiff,

13 v.

14 DEPUTY BILTON,  
15 SERGEANT MIARA, and  
COUNTY OF RIVERSIDE,

16 Defendants.  
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Case No. 5:23-cv-01596-JWH-SK

**JUDGMENT OF DISMISSAL FOR  
FAILURE TO COMPLY WITH  
COURT ORDER**

1 On August 9, 2023, Plaintiff Jonathan Willerford filed a Civil Rights  
2 Complaint under 42 U.S.C. § 1983 and a request to proceed without  
3 prepayment of the filing fees. (ECF No. 1-2.) Plaintiff, a *pro se* prisoner, alleged  
4 mistreatment by prison officials in violation of the Eighth Amendment. (ECF  
5 No. 1.)

6 On August 14, 2023, the Court issued an Order postponing for 30 days a  
7 ruling on Plaintiff's request so Plaintiff could provide more information. (ECF  
8 No. 4.) Specifically, the Court ordered Plaintiff to submit his trust fund  
9 statement and to file an Amended Complaint curing the pleading deficiencies of  
10 his original Complaint. (*Id.*) The Court informed Plaintiff that his failure to  
11 comply with the Order would result in dismissal of the case. (*Id.*)

12 As of this date, more than two months later, Plaintiff has not complied  
13 with the Order or otherwise communicated with the Court.

## 14 I. DISCUSSION

### 15 A. Legal Standard

16 A district court has the inherent power under Rule 41(b) of the Federal  
17 Rules of Civil Procedure to dismiss an action for failure to prosecute or to  
18 comply with the court's order. *See Link v. Wabash R. Co.*, 370 U.S. 626, 631  
19 (1962). Specifically, the failure of a plaintiff to comply with a district court's  
20 order to file an amended complaint is properly met with the sanction of dismissal  
21 under Rule 41(b). *See Applied Underwriters, Inc., v. Lichtenegger*, 913 F.3d 884,  
22 891 (9th Cir. 2019) (collecting cases). The sanction may be imposed when a  
23 plaintiff, "given the opportunity to amend or be dismissed, did *nothing*."  
24 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) (emphasis in  
25 original).

26 Under Ninth Circuit authority, "in order for a court to dismiss a case as a  
27 sanction, the district court must consider five factors: '(1) the public's interest  
28 in expeditious resolution of litigation; (2) the court's need to manage its docket;

(3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.’” *Yourish v. California Amplifier*, 191 F.3d 983, 986 (9th Cir. 1999) (quoting *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)).

A district court’s sanction of dismissal generally will be affirmed on appeal where at least four factors support dismissal or where at least three factors strongly support it. *See Hernandez*, 138 F.3d at 399. As discussed below, four of the five factors support dismissal.

## **B. Analysis**

### **1. The Public’s Interest in Expeditious Resolution**

The first factor supports dismissal. “[T]he public’s interest in expeditious resolution of litigation always favors dismissal.” *Yourish*, 191 F.3d at 990.

### **2. The Court’s Need to Manage Its Docket**

The second factor also supports dismissal. Plaintiff’s failure to respond to the Court’s Order interferes with the Court’s ability to manage its docket. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (“The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management and the public interest. Arguably, Pagtalunan’s petition has consumed some of the court’s time that could have been devoted to other cases on the docket.”) (internal citation omitted); *see also Irvin v. Madrid*, 749 F. App’x 546, 547 (9th Cir. 2019) (“The second factor also favors dismissal because the district court is in the best position to determine whether a particular set of circumstances interferes with docket management.”).

### **3. The Risk of Prejudice to Defendants**

The third factor also supports dismissal. The risk of prejudice is “related to the plaintiff’s reason for defaulting in failing to timely amend.” *Yourish*, 191 F.3d at 991. The record suggests no apparent reason for Plaintiff’s failure to

1 comply with the Court’s Order or failure to communicate with the Court. The  
 2 absence of any such reason indicates sufficient prejudice to Defendants. *See id.*  
 3 at 991-92 (holding that a paltry excuse for default indicates sufficient prejudice  
 4 to the defendants); *see also In re Eisen*, 31 F.3d 1447, 1452-53 (9th Cir. 1994)  
 5 (recognizing that the law presumes injury to the defendants from unreasonable  
 6 delay).

#### 7           **4. The Public Policy Favoring Disposition of the Merits**

8           The fourth factor weighs against dismissal. “We have often said that the  
 9 public policy favoring disposition of cases on their merits strongly counsels  
 10 against dismissal.” *In re Phenylpropanolamine (PPA) Products Liability Litigation*,  
 11 460 F.3d 1217, 1228 (9th Cir. 2006) (citing *Hernandez*, 138 F.3d at 399). On the  
 12 other hand, “this factor lends little support to a party whose responsibility it is  
 13 to move a case toward disposition on the merits but whose conduct impedes  
 14 progress in that direction.” *Products Liability Litigation*, 460 F.3d at 1228  
 15 (citations and quotation marks omitted). Thus, this factor alone does not  
 16 preclude dismissal.

#### 17           **5. The Availability of Less Drastic Alternatives**

18           The fifth factor supports dismissal. “Here the fact that the [Court]  
 19 allowed [Plaintiff] an additional thirty days to amend his complaint . . .  
 20 constituted an attempt at a less drastic sanction than outright dismissal.” *Ferdik*  
 21 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The Court also warned Plaintiff  
 22 that the failure to comply with the Court’s Order to amend his Complaint would  
 23 result in dismissal. *See Products Liability Litigation*, 460 F.3d at 1229 (“Warning  
 24 that failure to obey a court order will result in dismissal can itself meet the  
 25 ‘consideration of alternatives’ requirement.”) (citing, *inter alia*, *Ferdik*, 963  
 26 F.2d at 1262 (“Moreover, our decisions also suggest that a district court’s  
 27 warning to a party that his failure to obey the court’s order will result in  
 28 dismissal can satisfy the ‘consideration of alternatives’ requirement.”)).

1 Despite the Court's warning, two months have elapsed with no response from  
2 Plaintiff.

3 **C. Conclusion**

4 Four of the five factors support dismissal of the action for failure to  
5 comply with an Order of the Court. Moreover, the severity of the sanction is  
6 lessened because the dismissal is without prejudice rather than with prejudice,  
7 thereby "giving the plaintiff an opportunity to return and prosecute his claims  
8 another day." *Ash v. Cvetkov*, 739 F.2d 493, 497 (9th Cir. 1984) (explaining that  
9 dismissal without prejudice "is a more easily justified sanction"). In sum,  
10 dismissal without prejudice is warranted.

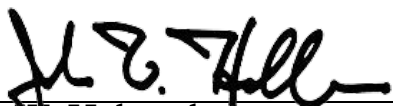
11 **II. DISPOSITION**

12 For those reasons, it is hereby ordered as follows:

- 13 1. This action is **DISMISSED without prejudice**.  
14 2. This document shall constitute Judgment in this action, in  
15 accordance with Rule 58 of the Federal Rules of Civil Procedure.

16 **IT IS SO ORDERED.**

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18 Dated: October 17, 2023

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21 John W. Holcomb  
22 UNITED STATES DISTRICT JUDGE  
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